

**CRIMINAL APPEAL No.339 OF 1993(S.J.)**

(Against the judgment dated 25.09.1993 and order of conviction dated 27.09.1993, passed by 2<sup>nd</sup> Additional Sessions Judge, Sitamarhi in Sessions Trial No. 144/92/6/93 and 67/93/14/93)

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RAM EKBAL RAI S/O HARKHAN RAI, R/O VILL. MANIARI TOLA KHARAHIA,  
P.S. MAJORGANJ, DIST. SITAMARHI.

----- (Appellant)

Versus

STATE OF BIHAR

----- (Respondent)

**CR. APP (SJ) No.360 OF 1993**

1. RAM BHAROSH THAKUR S/O DRIKPAL THAKUR, R/O VILL. RAM NAGARA,  
P.S. MEJARGANJ, DIST. SITAMARHI.

2. SHRI KANT KEWAT S/O NATHANI KAPAR, R/O VILL. KHERAHIA TOLA, P.S.  
MEJARGANJ, DIST. SITAMARHI.

----- (Appellants)

Versus

STATE OF BIHAR

----- (Respondent)

For the Appellant (Cr. App. No.339/93) :-

Mr.A. Giri, Advocate.

For the Appellants (Cr. App. No. 360/1993) :-

Mr. V.R.P.Singh, Advocate.

For the State

:- None

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P R E S E N T

**THE HON'BLE MR. JUSTICE KISHORE KUMAR MANDAL**

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Kishore K. Mandal, J

These two appeals arise out of and are directed against the judgment and order of conviction dated 25.09.1993 and 27.09.1993 respectively, passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Sitamarhi in Sessions Trial No. 144/92/6/93 and 67/93/14/93, whereby the three appellants herein have been held guilty under Sections 395 and 397 of the Penal Code and a composite sentence has been imposed on them. They have been sentenced to undergo R.I. for 08 years and have also been imposed a fine of Rs.

200/- each, in default whereof, they have further been directed to undergo R.I. for two months. These appeals have been heard together and are being disposed of by the present order.

2. The prosecution case as set out in the F.I.R.(Ext.1), which was lodged on 14.08.1991, by the A.S.I., in nutshell, are as follows:

In the intervening night of 13 and 14 August 1991, the informant was reading inside a room of his house. A burning lantern was kept on the television set which was kept in the rear verandah. The outer door of the room opening towards verandah was closed from inside. The door opening towards courtyard was open. Informant's son Rajesh Kumar (P.W.1) and his friend Manoj Kumar (not examined) were sleeping on the outer verandah. The prosecution case further is that at about 11.45 P.M. four accused persons entered into the room of the informant from the rear side of the house (courtyard) and one of them pointed pistol at the informant and demanded the valuables which included the documents stamp papers and other valuable documents kept in a box. It is further alleged that the accused persons committed robbery of the articles kept inside the room of the informant and thereafter one of the co-accused struck him with barrel of 'Nalkatua' (country made pistol) on his head. He was also fisted and slapped. It is alleged that as the dacoity was being committed inside the room he could learn that four accused persons had also made entry into the adjacent room occupied by the daughter in law (P.W.3) and had committed dacoity in respect of

valuables, jewelries and other articles kept inside the room. While retreating, it is alleged, miscreants also carried the television set that was kept on the verandah. The informant asserted that the dacoits were 12 to 15 in numbers. They entered into the house and left the house after committing dacoity by using the rear side of the door which was in the 'Angan' (courtyard) of the house. Informant further asserted while retreating one of the dacoits opened fire causing injury on his right elbow and the pellets also hit him in the chest. Informant has further alleged that after retreat of the dacoits the front door was opened permitting entry of his son (PW-1) and his friend Manoj Kumar (not examined) inside the room. He gave out the physical descriptions of the miscreants who participated in commission of dacoity. Informant asserted that he along with his son P.W.1 could identify some of the miscreants in the light of the lantern which was kept on the portable T.V. on the rear verandah of the house.

3. On the strength of such statement, Majorganj P.S. Case no. 65/91 was registered, and accordingly, the police embarked on investigation. It appears that in course of investigation, the appellants along with other accused persons were apprehended. Some of them including the present appellants were put on Test Identification Parades which was conducted by S.K.Upadhyay Judicial Magistrate (P.W.8) and Radhey Shyam Singh, Judicial Magistrate (P.W.10). It further appears that T.I.P., in respect of certain articles seized from the possession of other accused persons was conducted by (P.W.9) Hareshwar Prasad Singh (B.D.O.) On

conclusion of investigation, the Investigating Officer (P.W.7) submitted charge sheet whereby altogether 13 persons were sent up for trial. The appellants herein along with 10 others were put on trial. They all were charged under Section 395 of the Penal Code read with Section 397 of the Penal Code for having committed dacoity in the house of the informant, and in course whereof, causing injury to the informant by means of a deadly weapon. One of the co-accused namely, Nandlal Singh, was also charged under Section 412 of the Penal Code for having found in possession of some clothes belonging to the informant which were allegedly looted in course of the dacoity. The appellants like others pleaded false implication and thus abjured the guilt. They thus claimed to be tried. The defence of the accused/appellant was total denial of the occurrence.

4. The prosecution, in order to bring home the charges, examined altogether 10 witnesses.

P.W.1 is the younger son of the informant. P.W.2 Indradeo Prasad Singh is the informant of the present case. P.W.3 Nilam Devi is daughter-in-law of the informant being wife of P.W.5.

P.W.4 Sunil Kumar Singh is a neighbour, who is said to have arrived at the place of occurrence after retreat of the dacoits/miscreants.

P.W.5 is the eldest son of the informant. P.W.6 Dr. Bharat Singh is the doctor, who examined the informant (P.W.2) of his injuries and issued the injury report (Ext.2). P.W.7 Awadh Bihari Pandey is the Investigating officer of this case, who investigated the case and upon conclusion thereof submitted charge sheet. P.W.8 Santosh Kumar

Upadhyay is a Judicial Magistrate, who is said to have conducted two Test Identification Parades in Sitamarhi Jail on 28.08.1991 (Exhibits 3 and 3/I respectively). P.W.9 Hareshwar Prasad Singh is the B.D.O., who conducted the T.I.P. in respect of the seized/recovered articles on 28.08.1991 (Ext. 3/2). P.W.10 Radhe Shyam Singh is again a Judicial Magistrate, who is said to have conducted T.I.P. in the jail premises on 18.09.1991 (Ext. 3/3), wherein, appellants Ram Bharosh Thakur and Srikant Kewat were identified. The defence also adduced evidence in the shape of D.W.1 Shankar Singh, who is Ex-Mukhiya of the Gram Panchayat, Maniyari.

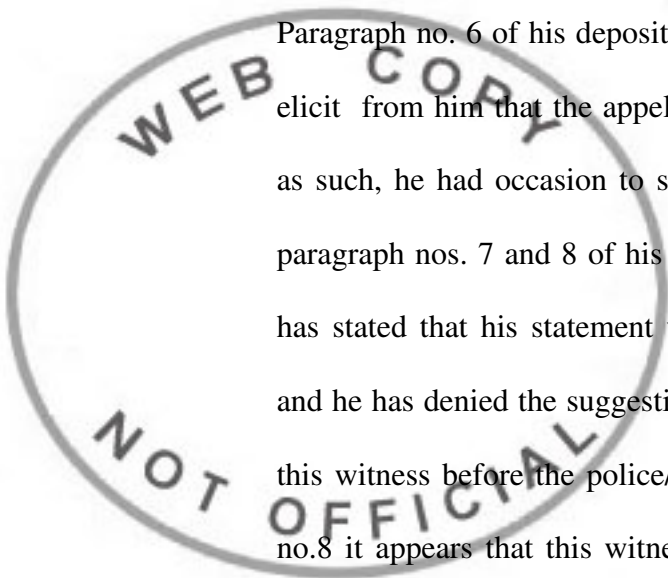
It is to be noted here that altogether 13 accused persons were charge-sheeted in this case and, therefore, put on trial. The learned trial court, on consideration of evidence adduced on behalf of the parties, acquitted 10 of the co-accuseds who were on trial including co-accused Yogendra Rai. The appellants herein were only convicted on the strength of the Test Identification Parades wherein the appellants are said to have been identified by some of the identifying witnesses. Learned counsels appearing on behalf of the appellants submit that in view of the fact that the appellants herein have been convicted relying mainly on their identifications by some of the identifying witnesses, they would refer to and rely upon the depositions of P.Ws. 1 (Rajesh Kumar), P.W.2 (informant), P.W.3 Nilam Devi and P.W.7 Sri Awadh Bihari Pandey (I.O.).

5. P.W.1 Rajesh Kumar Singh is the son of the

informant and also a witness to the recording of the F.I.R. (Ext.1). This witness has deposed that on the date and time of occurrence, he was sleeping on the outer verandah of the house. At about 12 o'clock, at night, he heard tapping sound from inside the house. He woke up and found that 5 to 6 miscreants were standing by his side room with country made pistol. One of them commanded him to remain on the bed (Chauki) he was sleeping on. 5-6 miscreants in the meanwhile, went inside the house through the door on the rear side of the house which crossed through the portion occupied by Ganga Singh (full brother of the informant). For about half an hour the miscreants committed dacoity inside the house. While the dacoits were retreating, this witness claims to have heard that Ganga Singh exhorted them to kill the informant (his own brother). Whereafter one of the miscreants fired at the father of this witness causing injuries in his shoulder. This witness further states that after retreat of the dacoits his 'Bhabhi' (P.W.3) Nilam Devi opened the door leading to the front verandah whereafter this witness along with P.W.4 and two others (not examined) entered into the room only to find that the box was missing and the door of the Almirah was broken and papers were scattered hither and thither. Thereafter he went to the adjacent room occupied by his 'Bhabhi' (P.W.3) to find that several boxes kept therein were removed and missing. He states that while retreating, the miscreants also carried the portable television whereon the lantern was kept providing the source of identification. He is emphatic that in the light of the burning lantern, he could identify the dacoits carrying

looted articles along with them. On 28.08.1991 he was made to participate in the Test Identification Parade in which this witness is claimed to have identified appellants Ram Ekbal Rai, Ram Bharosh Thakur, Srikant Kewat and one Yogendra Rai (since acquitted). According to this witness, when he came outside on the verandah along with his 'Bhabhi', his father informed him that his brother Ganga Singh ( who occupies part of the residential house) was heard exhorting the dacoits to kill him. This witness thereafter went to the police out-post along with his injured father (informant) where the fardbeyan was recorded. He claims to have put his signature. This witness has stated that he knew the appellants and co-accused Yogendra Rai (since acquitted) from before only by their names.

Paragraph no. 6 of his deposition indicates that the defence tried to elicit from him that the appellants are residents of nearby tolla, and as such, he had occasion to see and know them from before. From paragraph nos. 7 and 8 of his deposition, it appears that this witness has stated that his statement was earlier recorded before the police and he has denied the suggestion that there was no prior statement of this witness before the police/Investigating Officer. From paragraph no.8 it appears that this witness has tried to incorporate allegations respecting his own uncle (Ganga Singh) when he says that the dacoits were using the passage/door which is in the possession of Ganga Singh and also made an attempt to support the statement of his father that at the instance of his uncle (Ganga Singh) one of the miscreants returned back to the room of the informant and fired causing injury in

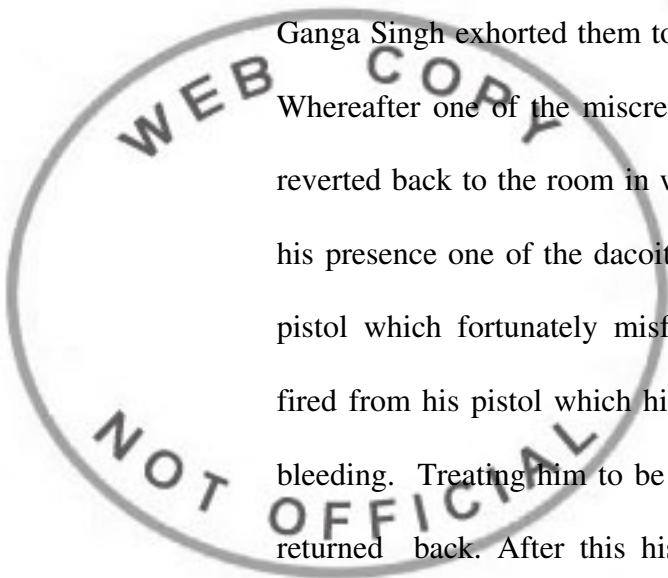


his shoulder. In the aforesaid paragraph this witness has further stated emphatically that he could identify the stolen articles being carried by the dacoits in the light of the lantern which was kept burning on the rear verandah of the house. In his cross-examination, an attempt was made to elicit from him that appellant Ram Ekbal Rai who is resident of the nearby tolla was employed by the father of this witness which was however denied by him. To a question, this witness has stated that some of the appellants had come without muffling their faces whereas some of the accuseds had muffled their faces. Appellant Ram Ekbal Rai, according to him, had come without hiding his face in any manner.

6. P.W.2 is the informant of this case. According to him, on the relevant date and time of occurrence, he was reading inside the room which had two doors. One door opened on the front verandah (Nawgoal) whereas another door opened up on the rear verandah. It is stated that the door which was opening on the rear verandah was open at the time of occurrence. All on a sudden, 07 miscreants entered into the room through the rear door. They had made entry through the door in the 'angan' of the house. The miscreants assaulted him initially with the butt of the pistol and fists. He volunteered the keys to the miscreants, and thereafter, they started looting the properties kept therein by breaking open the almirah and taking out articles kept therein. He thereafter describes the articles which have been allegedly looted away by the dacoits. In paragraph no.2 of his examination-in-chief, this witness states that after



committing dacoity in his room the dacoits entered into the room occupied by his daughter-in-law (P.W.3) and from there they lifted boxes, trunks containing house hold articles. Paragraph no.2 of his deposition sets out, to some extent, the topography of the place of occurrence. According to him, the house consists of 11 rooms. Out of which four rooms is/are occupied by his full brother Ganga Singh. The dacoits on the date and time of occurrence used the door and passage which is in the occupation of his brother Ganga Singh. In his examination-in-chief, he has tried to add on what he has stated/alleged in his 'fardbeyan'. This witness says that while leaving the house of the informant, the dacoits passed through the door which was in occupation of his brother Ganga Singh when he heard that Ganga Singh exhorted them to do away with the life of this witness. Whereafter one of the miscreants as also his brother Ganga Singh reverted back to the room in which this informant was sitting and in his presence one of the dacoits fired at his chest with country made pistol which fortunately misfired, whereafter the miscreants again fired from his pistol which hit him in his right arm causing profuse bleeding. Treating him to be dead the miscreants and Ganga Singh returned back. After this his daughter-in-law (P.W.3) came and opened the door opening on the front verandah which permitted entry of his son Rajesh Kumar Singh (P.W.1) and other persons called Manoj (not examined), Sunil Kumar (P.W.4) and Chandra Raut (not examined). His son (P.W.1) and Manoj (not examined) disclosed to him that while they were sleeping on the front verandah the



miscreants had surrounded them and commanded them to sit on the bed and to keep quiet. The informant thereafter with the help of his son P.W.1 and Manoj ( not examined) went to the police out-post where his statement/ 'fardbeyan' was recorded on which he put his L.T.I. Paragraph no.5 of his statement needs particular attention of the court. This witness has stated as under:

“उस रात को हम गंगा सिंह छोड़कर और किसी को नहीं पहचान सके।”

In the same paragraph he claims that he went to Jail from the hospital itself to participate in the T.I.P. in which he identified appellants Ram Ekbal Rai and Ram Bharosh Thakur. Paragraph no.7 of his cross-examination indicates that he made a departure from his earlier stand and said that in fact he along with Manoj Kumar (not examined) and (P.W.3) Nilam Devi had also claimed identification. He then alleges that another accused Nandlal Singh (tried and acquitted) is a 'gotiya' but he was residing separately adjacent to his house. He admits that Ganga Singh was his own full brother. In his cross-examination in paragraph no.8, this witness has stated that appellant Ram Ekbal Rai is the resident of nearby 'tolla' called kharahia, which is contiguous to his village. However, in the same paragraph he admits that whenever he used to travel by a train, then he used to cross through this village kharahia on way to railway station. In paragraph no.11 of his deposition, this witness states that village Ramnagra which is village of appellant Ram Bharosh Thakur is also adjacent to his village and he knew many of the villagers by name and face. Paragraph no.12 of his deposition indicates that this

witness is well known about the topography of the village/tola Ramnagra which has already been admitted by him to be a neighbouring 'tola'. Appellant Ram Bharosh Thakur is resident of this village. It is noted here that in paragraph no.13 this witness admits that co-accused Yogendra Rai (who is also resident of tola Ramnagra) was identified by him at the T.I.P. (acquitted by the court). On his own, he states that house of Ram Bharosh Thakur is adjacent to the house of Yogendra Rai.

7. P.W.3 is the daughter in law of the informant P.W.2. According to her examination-in-chief she awoke on hearing tapping sound on the door. It is alleged that in her room 6-7 dacoits forcibly entered and lifted trunks and other articles kept therein. After the retreat of the dacoits, she went to the room where her father-in-law (P.W.2) was living only to find that he had received one gun shot injury. She claims that she heard voice of Ganga Singh exhorting the accuseds to kill the informant (father-in-law). She is positive in her examination -in -chief that after she went to the room of her father-in-law and having seen him in an injured condition she opened the door leading to the front verandah whereafter Manoj Kumar (not examined) and Rajesh Kumar (P.W.1) entered into the room and disclosed that they were also surrounded by the accuseds/dacoits. It is alleged that thereafter the informant was carried to the police station by Manoj Kumar (not examined), Rajesh Kumar (P.W.1) and Sunil (P.W.4). She thereafter claims that she identified the dacoits in the light of the burning lantern. In her deposition at paragraph no.5 this

witness has stated that her statement was not recorded by the I.O. of the case. But, subsequently adds that on the next morning she made some statement. Looking to her deposition it appears that she is emphatic that she identified some of the participants of the occurrence in the light of lantern. This court finds from her deposition that the T.I.P. in which she participated was held 5-6 days after the arrest of the accused persons.

8. P.W.8 Santosh Kumar Upadhyay is the witness in whose presence the T.I.P. was made. Referring to his deposition at paragraph no.6, it has been pointed out that this witness has admitted that the witnesses while identifying the appellants had also identified some of the other accused persons standing up in the queue, who are/were, in fact, neither the accuseds nor the suspects of the present case. It further appears from his deposition that to a question, as to whether all the suspects lined up for T.I.P. had identically dressed up or similar physical appearance, the answer was 'no'.

It is admitted position that all the three appellants herein are said to have been identified at the T.I.P. conducted by this witness which is on record as Exts. 3 and 3/1. Learned counsels draw attention of this court to paragraph no.4 of his deposition wherein this witness has stated that P.W.2 (informant) identified appellants Ram Bharosh Thakur and Ram Ekbal Rai. P.W.1 Rajesh Kumar identified appellants Ram Bharosh Thakur, Srikant Kewat and Ram Ekbal Rai. P.W.3 (Nilam Devi) identified appellants Ram Bharosh Thakur, Srikant Kewat and Ram Ekbal Rai. Both the counsels while

criticizing the judgment submitted that from the materials on record it can be inferred that the informant and naturally the other witnesses who are his own family members knew the appellants from before at least by name. Referring to different paras of his deposition, it has been contended that this informant knows the 'tolla' to which they belong as well as the topography thereof which, according to the learned counsels, are contiguous 'tollas'. It appears from his deposition that one of the appellants resides adjacent to the house of another appellant. P.W.1 at paragraph no.3 has stated that he know the appellants by name.

9. It is contended that the T.I.P. by itself is not a substantive piece of evidence. This at best corroborates the other evidence available on record. According to learned counsels if the appellants were known to the informant from before even by name and their places of residence the T.I.P. probably would not bear the same sanctity. Referring to the deposition of P.W.8 and the T.I.P. Charts available on record (Exts. 3 and 3/1), it has been contended that the witnesses while identifying the appellants have not assigned any specific role to any of them which they might have been playing in course of commission of dacoity. Learned counsel highlights, referring to the deposition of P.W.8, that admittedly some of the identifying witnesses did commit mistake as they identified some persons who were neither a suspect nor an accused in the present case.

10. Learned counsels further criticized the prosecution

case and the evidence available on record with regard to alleged identification by P.Ws. 1, 2 and 3 on the ground that the consistent case of the prosecution is that they could identify the dacoits in the light of lantern which was allegedly burning on the verandah (Nawgol) of the room and was kept on the television set. It is contended with reference to the evidence of P.Ws. 2 and 3 that if there evidence is to be believed then P.W.1 had absolutely no occasion to identify the dacoits as their evidence is/are to the effect that after the retreat of the dacoits P.W.3 entered into the room of the informant (P.W.2) and saw him in an injured condition and only thereafter she opened the door permitting Manoj Kumar ( not examined) and the Rajesh Kumar (P.W.1) to enter into the room of the informant and see him in an injured condition. It is highlighted, at this juncture, that P.W.2 (informant), in his deposition, has candidly stated at one point that till lodging of the case he had identified only Ganga Singh as an accused. This court reminds itself of the fact that Ganga Singh is none other than the full brother of the informant and is occupying part of dwelling house wherein he is residing. It is further to be borne in mind that P.W.2 and in fact P.Ws. 1 and 3 as well subsequently in course of deposition have made a consistent departure from what they had stated before the Investigation Officer by alleging some role to Ganga Singh who is not facing charge and trial in the present case. Arguing further, it is submitted that P.W.1 in no manner can be relied upon on the basis of evidence available on record as going by the evidence of P.Ws. 2 and

3, he had absolutely no occasion to identify the accuseds and that this witness apart from identifying some of the present appellants also identified co-accused Yogendra Rai who has been tried and acquitted of the charges by the learned trial Court. This court finds from the record particularly the deposition of the Investigating Officer (P.W.7) that absolutely no attempt was made by any of the witnesses to show the place where alleged burning lantern was kept on the relevant date and time. The I.O. did not find any such lantern and/ or sign of burning lantern and, therefore, has not seized and produced the lantern as the material Exhibit in the present case. This submission assumes significance in the light of the fact appearing from the record that it is not the prosecution case or the evidence of P.Ws. that while retreating the dacoits carried the lantern also along with the looted articles.

11. Learned counsels for the appellants referred to and relied upon the judgment of the Hon'ble Supreme Court rendered in the case of Budhsen and another Vrs. State of U.P. reported in 1970(2) SCC 128  $\simeq$  A.I.R. 1970 SC 1321. Particular reliance was placed on paragraph no. 6, 7 and 18 of the said judgment.

12. This court finds that in the aforesaid case the conviction was recorded based on the T.I.P. where the appellants were identified. The trial court convicted the appellants. Appeal therefrom filed by the appellants was dismissed. Thereafter the appellants had moved the Hon'ble Supreme Court. The Hon'ble Supreme Court in paragraph no.6 of the said judgment has observed

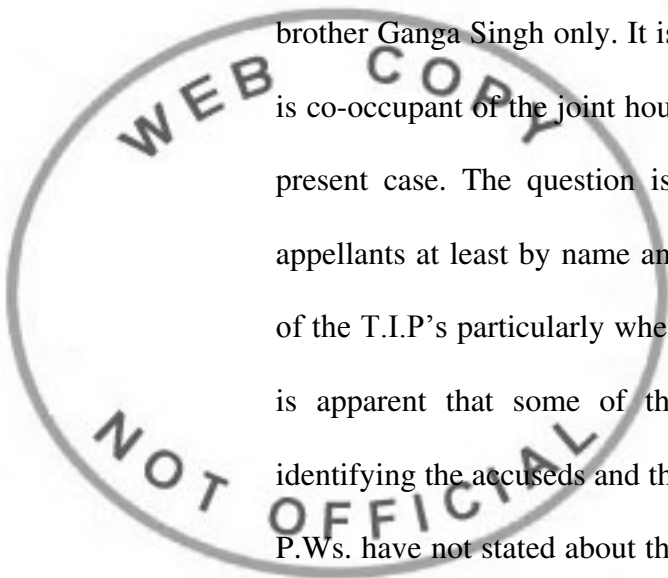
that the primary evidence against the appellants is that of their identification by the witnesses therefore the crucial point seems to be the admissibility and value of the evidence regarding the identification of the appellants. Paragraph no.7 thereof, deals with the evidentiary value of such T.I.P. There cannot be any other view other than what has been spelt out therein that the purpose of prior test identification is to strengthen the trustworthiness of the witnesses/evidence. Paragraph no.18 of the said judgment needs mention. This is what the Hon'ble Supreme Court has to say in paragraph no.18 at page 139 of 1970(2) SCC.

*“Before us the entire case depends on the identification of the appellants and this identification is founded solely on test identification parades. The High Court does not seem to have correctly appreciated the evidentiary value of these parades though they were considered to be the primary evidence in support of the prosecution case. It seems to have proceeded on the erroneous legal assumption that it is a substantive piece of evidence and that on the basis of that evidence alone the conviction can be sustained. And then that court also ignored important evidence on the record in regard to the manner in which the test identification parades were held, and other connected circumstances suggesting that they were held more or less in a mechanical way without the necessary precautions being taken to eliminate unfairness.”*

13. This court considered the submissions advanced on behalf of the appellants and perused the evidence referred to and relied upon by them. So far as the present appellants are concerned, P.W.1 (Rajesh Kumar), in his examination-in-chief, has admitted that he was sleeping on the outer verandah. Some dacoits came and surrounded him and he was made to sit in that position until the retreat of the dacoits. P.W.3 has categorically stated that after the retreat of the dacoits she came out of her room and entered into the



room occupied by her father-in-law (informant) and saw him in an injured condition and thereafter she opened the door permitting entry of this witness and one Manoj Kumar ( not examined). Therefore, this court has absolutely no manner of doubt in holding that P.W.1 had absolutely no occasion to identify the dacoits. So far P.W.2 (informant) is concerned, this court finds from his deposition as well as the deposition of his son P.W.1 that they knew the 'tolla' from where they belong to and the situation of their houses in the said 'tolla'. Informant had occasion to travel through the said 'tolla' as and when he used to alight on the Railway station and used to travel up to his tolla/village . This witness, in his deposition, has stated that till lodging of the case he had claimed identification of his brother Ganga Singh only. It is to be repeated here that Ganga Singh is co-occupant of the joint house and that he is not facing trial in the present case. The question is, therefore, if these P.Ws. knew the appellants at least by name and places of abode what is the sanctity of the T.I.P's particularly when, looking to the evidence of P.W.8, it is apparent that some of the witnesses did commit mistake in identifying the accuseds and that while identifying the appellants the P.Ws. have not stated about the role, specific or general, they played in course of commission of the dacoity. This court finds force in the submission of the learned counsels (based on the case referred to above) that if it is found that P.W.8 knew the accused by name and their places of abode the sanctity of T.I.P. stands diluted. The submissions of the learned counsels that the T.I.P. was not



conducted in the manner so as to exclude all possibilities of wrong identification as P.W.8 has stated and that the suspects lined up for T.I.P. were not identical and/or similar in built up, their attire and physical look. After all T.I.Ps are not substantive piece of evidence. Such claim of identification at T.I.P. has to be decided with reference to the evidence available on record. At this stage, this court would also notice that so far as the source of identification, as claimed by the prosecution through out is concerned, the same also does not inspire confidence for the reason that when the Investigating Officer (P.W.7) visited the place of occurrence and examined the witnesses, he was not shown the place where the alleged lantern was kept and burning. Naturally said lantern is not on record as material Exhibit.

Had the P.Ws. shown him the place where, according to them, it was placed in burning condition the I.O. could have noticed some sign of the presence of the lantern. This court also takes into account the fact that almost all the three witnesses, namely, P.Ws. 1, 2 and 3 in course of their respective depositions, made obvious attempt to launch Ganga Singh in the present case who is none-else than the own brother of the informant (P.W.2). This court also takes into account that so far as P.W.1 is concerned, the trial court has already disbelieved him, although in part, so far as his alleged identification of co-accused Yogendra Rai is concerned, as he was tried along with the appellants and acquitted of the charge(s).

14. Taking into account all these facts/evidence available on record, this court is of the considered view that the

prosecution has not been able to prove the charge(s) leveled against the appellants beyond all reasonable doubts. They deserve benefit of doubt.

Accordingly, the appeals are allowed. The judgment and order of conviction passed by the learned trial court is set aside. They are discharged from liabilities of their bail bonds.

Patna High Court,  
The 6<sup>th</sup> August, 2009  
Sym/N.A.F.R.

**(Kishore K. Mandal, J.)**

